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WTO Adopts Panel Findings Upholding Section 301

United States Trade Representative Charlene Barshefsky today announced that the World Trade Organization Dispute Settlement Body has adopted the report of a dispute settlement panel upholding the WTO-consistency of Section 301 of the Trade Act of 1974. The panel had rejected a complaint by the European Union that Section 301 was inconsistent with WTO rules, and the EU decided not to appeal the ruling.

“We are pleased that the WTO has now formally confirmed the panel’s conclusion that Section 301 is consistent with U.S. WTO obligations,” stated Ambassador Barshefsky. “Today’s action by the WTO closes the door on the EU’s unfounded claims regarding the legitimacy of Section 301. Section 301 has been and will remain essential to our efforts to enforce our international trade rights.”

Section 301 is the statutory means by which the United States asserts its international trade rights, including its rights under WTO Agreements. The EU claimed that Section 301 violates provisions of the WTO Dispute Settlement Understanding (DSU), the WTO Agreement and the General Agreement on Tariffs and Trade 1994 (GATT 1994). These rules deal with determinations by a WTO Member that another country has violated its WTO rights, as well as any actions taken in response.

The panel found nothing to contradict evidence that the United States has in fact acted in accordance with its WTO obligations in every Section 301 determination involving an alleged violation of U.S. WTO rights. The panel concluded that neither the EU nor the third parties to the dispute had demonstrated otherwise. (Panel report, paragraph 7.130)

Background

The EU brought its claim late in 1998. The EU complaint was not about the application of Section 301 in any particular case. Rather, the EU argued that the time frames in Sections 301-310 do not allow the U.S. government to wait until the DSB has adopted panel and Appellate Body findings before making its determinations and suspending concessions.

Specifically, the EU claimed that the 18-month deadline in Section 304 for determining whether U.S. agreement rights have been denied does not allow enough time for WTO panel proceedings to finish in all cases, and that U.S. determinations under Section 301 are therefore inconsistent with Article 23 of the WTO Dispute Settlement Understanding.

The EU also challenged the time frames in Sections 305 and 306 for taking action when another Member has failed to implement adverse DSB rulings and recommendations. The EU claimed that the statute requires the United States to make determinations and to take action before WTO panels can confirm non-compliance under Article 21.5 procedures and determine the amount of any suspension of concessions under Article 22 procedures. This, according to the EU, violated DSU Article 23 and GATT 1994 Articles I, II, III, VIII, and XI.

The Panel rejected these claims. It found that the language of the Section 301 statute provides USTR with adequate discretion to comply with WTO rules in all cases. It also found that while the statutory language does not provide assurances as to how that discretion will be exercised, such assurances are provided when the statute is read in light of the Uruguay Round Agreements Act Statement of Administrative Action. That 1994 document expresses the long-held U.S. intention to follow DSU procedures when making WTO-related determinations under Section 301. The panel noted that the U.S. statement in this regard “did not represent a new U.S. policy or undertaking.”

The WTO established the three-member panel on March 2, 1999. Brazil, Canada, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, Hong Kong, India, Israel, Jamaica, Japan, Korea, St. Lucia and Thailand appeared as third parties in the dispute.

